

**VICTIMS' RIGHTS IN THE 21st CENTURY:
A CALIFORNIA PERSPECTIVE**

**REMARKS BY
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**LEADERSHIP ISSUES IN CRIMINAL JUSTICE POLICY CONFERENCE
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I have been asked to talk about the history of victims' rights and services in California, as well as at the federal level - - and also to discuss where we want to go in the 21st Century. What are our most important challenges and how are we going to meet them? To give context and depth to my comments during the next 15 minutes, I want to begin my remarks, and I will conclude my remarks, by talking about specific crime victims.

The first time that I met a sexual assault victim was more than 20 years ago when I was serving as a volunteer legal counsel at the Santa Monica Rape Treatment Center. I had no idea at the time how that one meeting would change my life.

Emma had come to the Rape Treatment Center for counseling after being sexually assaulted by a bus driver. I listened in stunned silence as she described traveling on a bus from her job in downtown Los Angeles to the UCLA campus where she was a graduate student.

She was the only passenger on the bus as it approached the campus. The driver suddenly pulled over into a secluded location. When Emma tried to get off the bus, the driver locked the doors. Emma ran to the back of the bus. As the driver followed and began to assault her, Emma described herself as being petrified, "frozen with fright," unable to speak, to move, or to resist. After the bus driver raped her, he let her off the bus and drove away.

I went with Emma to the District Attorney's office to request that it file a sexual assault case. We were told that the case could not be prosecuted because California law required "resistance" by the victim. Emma, who was in a state of "frozen fright," not uncommon in crime victims, had not resisted the attacker.

Next we went to the Bus Authority. We were told that the driver would not be fired because the District Attorney had refused to file a case.

I was incredulous. After many requests, we finally forced the Bus Authority to hold a hearing that resulted in the firing of the driver. We spent the next year in a long campaign to remove the victim resistance provision from the California rape law. Through our advocacy efforts, the California Legislature enacted such a law in 1980, ensuring that the cases of future victims who "froze with fright" could be prosecuted. The *Los Angeles Times* listed our law as one of the most significant pieces of legislation that year.

In all of my various jobs, whether I was working as a prosecutor, a police reserve officer, an administrator of a model facility for child sexual abuse victims, the Director of the Office for Victims of Crime in the United States Justice Department, and now as a member of Governor Gray Davis' cabinet where I work closely with the State's Victim Compensation Program, I have carried with me lessons learned from Emma's case:

- That public policy which benefits many is often shaped by one courageous person who steps forward and takes a stand; and
- Crime victims should be at the center of the criminal justice system, instead of on the outside looking in.

As we look back at what has been accomplished in California, we recognize that victims like Emma have played an important role in those accomplishments.

When I went through training 25 years ago to become a prosecutor in the Los Angeles City Attorney's Office, and later a police reserve officer with the Los Angeles Police Department, there was no discussion of the rights of crime victims. Just three decades ago, there were no statewide coalitions, no Mothers Against Drunk Driving, no Parents of Murdered Children, no Crime Victims United, no National Organization for Victim Assistance. There was no vast network of crime victim assistance and compensation programs.

California "Firsts"

But California has played a pioneering role in changing all of that. Let me highlight some California "firsts":

- In 1965, California became the first state in the nation to create a crime victim compensation program. Every state now has such a program. California's victim compensation program is not only the oldest, but by far the largest. The California Victim Compensation Board will pay out a record \$100 million in claims this fiscal year.
- In 1972, California was among the first three states to initiate a victim assistance program in the United States when Bay Area Women Against Rape was founded in San Francisco. Today, there are more than 10,000 victim assistance programs around the country.
- In 1974, in Fresno County, Chief Probation Officer Jim Rowland created the first victim impact statement. These statements help judges to begin to understand the true measure of a victim's loss and the significance of physical and psychological injuries. And they are now a right under the law that crime victims have in most states.
- Until 1980, there was no organized citizens lobby to address the leading criminal cause of death and injuries -- drunk driving. It took the efforts of Candy Lightner, whose 13-year-old

daughter was killed by a drunk driver, and other bereaved parents to educate America that a loaded driver can be just as deadly as a loaded gun. The first MADD chapter was founded here in Sacramento, along with a chapter in Annapolis, Maryland. Largely because of the efforts of MADD, which today has 600 chapters across the country, drunk driving fatalities have decreased nearly 40 percent (from more than 25,000 alcohol-related fatalities in 1982 down to 16,653 alcohol-related fatalities in 2000). In addition, more than 2,300 pieces of DUI legislation have been passed during the past two decades.

- In 1982, Californians passed Proposition 8, the first victims' rights amendment to a state constitution. Today, 32 states have victims' rights amendments, and every state has a victims' bill of rights. These provide victims with fundamental rights to notice of important proceedings; participation in those proceedings, including victim impact statements at time of sentencing; and restitution.
- In 1983, one of the first children's advocacy centers -- Stuart House, which I helped to create -- was founded in Santa Monica, California. It is a place where abused children can go to receive all of the services they need in one child-oriented location. All of the professionals who interact with these children, from police officers and prosecutors to mental health and medical professionals, work together as a team to help resolve each case. This coordinated approach grew out of viewing the system from the child victim's point of view. Previously, young children were commonly interviewed as many as a dozen times by different professionals who were not aware of actions by other agencies. Today, more than 400 such multidisciplinary centers have been formed across the country to provide healing and justice for child victims.
- In 1984, California State University, Fresno became the first university to initiate a Victim Services Certificate program. By 1991, CSU Fresno began offering the first bachelor's degree program in victimology in the nation.
- Until 1990, no state had laws making stalking illegal. That year, California enacted the first anti-stalking law. By 1993, similar laws had been enacted in 49 states and the District of Columbia.

- During the past three and a half years, Governor Gray Davis has added to this distinguished legacy of leadership on behalf of crime victims. The accomplishments in the victim compensation area alone are considerable:
 - Benefits have been increased from \$46,000 to \$70,000, which puts California among the top four states in terms of compensation benefits.
 - The Compensation Board reduced a 12-page application form into a single two-sided page, dramatically increasing applications and payouts. The new streamlined form was recently awarded a Clarity Award from the State Office of Innovation in Government.
 - Every effort is being made to integrate the voices of crime victims into the victim compensation process, to make automated letters more customer-friendly and to institute needed reforms.
 - The Board's backlog of nearly 40,000 overdue compensation claims has been virtually eliminated, and processing times have been reduced significantly.

Response to September 11 Victims

Innovation in victims' services continues to this day in California. Many new programs were initiated after the September 11 tragedy to help more than 350 surviving family members with California connections who lost loved ones at the World Trade Center, the Pentagon, and the four airplane flights, all of which were headed toward our state. The diversity of victims with whom we have been in contact is remarkable:

- The parents of a brilliant young college student who had just graduated from Boston University and was returning home to look for her first job;
- The husband and daughters of a Muslim nurse who was fluent in six languages and whose daughter later remembered seeing one of the hijackers follow her mother onto the plane;
- The Japanese-American children whose father worked for a world peace organization;
- The family of a native of Ethiopia who came to the United States for his education, earned a medical degree from the University of Michigan, and planned to help pay for the schooling of all of his brothers and sisters; and
- The registered domestic partner of one of the flight attendants who was killed aboard American Airlines Flt. 11.

These victims truly represent the many faces of America.

Although no one was prepared for the magnitude of this kind of event, California responded quickly and effectively.

- On September 12, the Victim Compensation Board established a 1-800 number to fast track claims of the victims of the attacks and assigned a case manager to each affected family.
- In one day, the Governor signed legislation that expanded victim benefits, provided mental health counseling for members of the California Urban Search and Rescue teams that went to New York, and transferred \$1 million to the New York Victim Compensation program.
- As we began talking with more and more victims' families, we recognized the need for other critical services, such as basic legal counseling to address a myriad of issues, such as how they were going to pay their rent, taxes, and mortgages?
- Working closely with the State Bar of California, as well as with several local bar associations, we helped to train attorneys to provide volunteer legal assistance to all victims who requested it. This included assistance in analyzing the new federal compensation program that Congress had enacted.
- We felt that it was important for families to meet with one another and to interact with service providers in Sacramento. Last October 8, many survivors met in Sacramento for the first time, and the next day they participated with the Governor in a statewide Day of Remembrance. Family members began to form bonds and develop a network of support. Many commented that this meeting was an important milestone in their on-going process to find justice and healing, as was a second meeting that we held so that the victims could speak directly with Kenneth Feinberg, the Special Master of the federal September 11 Victim Compensation Program.

Advancements in Federal Victims' Rights and Services:
1982-2002

While many advances were being made in California to increase victims' rights and services, revolutionary change in victims' rights and services also was taking place at the federal level, particularly through the development of federal funding sources for victim services.

In 1982, President Ronald Reagan issued an Executive Order that established the President's Task Force on Victims of Crime. The group, chaired by California attorney Lois Haight Herrington, who later became an Assistant Attorney General at the United States Department of Justice, held public hearings around the country and issued a landmark report that raised national awareness of crime victims' issues. The report described the plight of crime victims and offered 68 recommendations for addressing many of the problems identified.

Among the key recommendations, the report suggested that Congress enact legislation to provide federal funding to assist state crime victim compensation programs, as well as to support victim assistance programs. These recommendations ultimately led to the passage of the federal Victims of Crime Act in 1984, which provided, for the first time, a base of federal funding to states for victim compensation and assistance, and the development of the Office for Victims of Crime within the United States Department of Justice to administer those federal funds and to advocate on behalf of crime victims.

VOCA mandated that certain criminal fines, penalty assessments, and forfeited appearance bonds be placed in a Crime Victims Fund, which then are used to support state victim compensation and assistance programs, as well as earmarked programs, including services for victims of federal crimes.

In its first funding cycle in FY 1985-86, OVC distributed \$68.3 million in VOCA funds. During my tenure as the Director of the Office for Victims of Crime, the Fund reached a then unprecedented \$528.9 million due to extraordinary fine collection efforts by U.S. Attorneys around the country. In 2000, Congress passed a law capping the amount of funds that could be distributed to state crime victims programs. Currently, up to \$550 million is available annually from the federal government to support victim services nationwide.

The expansion of funding for victims programs through VOCA has helped to strengthen dramatically the victim service system around the country and at the federal level. For example, OVC funded major trainings for FBI and U.S. Attorney representatives on victims' issues, expanded victims' programs in Indian Country, helped communities replicate "promising practices," and developed a national crisis response capacity.

The additional funding also enabled OVC to work with various professional organizations to help them look at their roles differently. While I will talk about these more when I address some guiding principles for the 21st Century, I want to highlight how this expanded funding helped various professionals, such as probation and parole officers, to view their roles in the context of the larger, integrated service system – letting crime victims know when an offender is released, or putting on victim impact panels. In addition, by funding “promising practices,” OVC has helped spread information about what works in victims services throughout the country, such as by publicizing the work of the Victim Service Center in Jacksonville, Florida – a one-stop shop for crime victims.

Another important development in victim funding and services occurred in 1994, when Congress enacted the first comprehensive Violence Against Women Act. Among other things, VAWA authorized more than \$1 billion in funding for programs to combat violence against women and established a Violence Against Women Office at the Justice Department, headed by a Presidentially-appointed director. VAWA was reauthorized in 2000 and will provide an additional \$3.3 billion in funding through 2005.

Oklahoma City Bombing

As somebody who has worked in both the state and federal systems, I can tell you that I was horrified by the state of victims’ rights and services within the Federal system when I arrived at OVC in 1994. It was about 10 years behind the state in terms of victims’ rights and services. But in addition to an influx of funding for victims’ services, perhaps nothing focused greater attention on the need for rights and services for crime victims in the federal system than the Oklahoma City bombing on April 19, 1995. Part of this change was due to the horrific nature of the crime, but part of the advances had to do with having an Attorney General, Janet Reno, who believed strongly in providing victims’ rights and services.

The impact of the bomb, which killed 167 people, was devastating. According to the Oklahoma Department of Mental Health and Substance Abuse Services:

- 30 children were orphaned.
- 219 children lost a parent.
- An estimated 360,000 people knew someone who was killed or injured.

The sheer numbers of victims provided the federal system with one of its greatest challenges. Attorney General Janet Reno was adamant that the federal response to this tragedy

would be highly coordinated and effective. Extraordinary steps were taken to educate surviving family members and victims about their rights and available services:

- Regular briefings were set up by the U.S. Attorney's Office prosecuting the case to keep victims informed of the status of the investigation and later the prosecution.
- When the trial was moved to Denver, Colorado, for the first time in a federal case, a closed circuit television link was established to enable victims in Oklahoma City to watch the proceedings.
- A safe haven was organized in Denver so that victims had a place to go for counseling and repose.
- A massive organizational effort ensured that as many victims as possible attended the proceedings on a rotating basis. The federal government paid for their transportation.
- Finally, the Office for Victims of Crime worked closely with the American Red Cross, the Federal Emergency Management Agency, and the Executive Office for United States Attorneys to develop a Memorandum of Understanding to ensure mutual cooperation and information-sharing during future large scale crimes.

Why is all of this important? Under the most difficult of circumstances, we can provide comprehensive services to victims of mass violence. If we can do it in these complicated cases, we have to be able to do it in individual cases as well. The Oklahoma City bombing, while one of the worst terrorist acts in our nation's history, brought out the best in the criminal justice system in terms of victims' rights and services.

Victims' Rights Amendment to the U.S. Constitution

The 1982 President's Task Force on Victims of Crime proposed amending the Sixth Amendment of the United States Constitution to provide certain victims' rights. During the next 15 years, crime victim advocates focused their legislative attention at the state level and helped push for the enactment of victims' rights amendments to more than 30 state constitutions.

By the mid-1990's, national victims' organizations began advocating for a victims' rights amendment to the United States Constitution. In 1996, California Senator Dianne Feinstein worked with Arizona Senator Jon Kyl to introduce a victims' rights amendment to the Constitution. What made this effort unique was that this amendment was supported not only by national crime

victims' organizations, but by President Bill Clinton, Vice-President Al Gore, and Attorney General Janet Reno.

Although the amendment has not yet prevailed in Congress, the Feinstein-Kyl victims' rights amendment continues to be re-introduced each legislative session. The current version of the victims' rights amendment, S.J. Res. 35, was endorsed by President Bush on April 16, 2002.

The proposed Victims' Rights Amendment would establish the following rights:

- To reasonable and timely notice of any public proceeding involving the crime and of any release or escape of the accused;
- Not to be excluded from such public proceeding and reasonably to be heard at public release, plea, sentencing, reprieve, and pardon proceedings; and
- To adjudicative decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender.

Guiding Principles for the 21st Century

As we look to the future -- to victims' rights and services in the 21st Century -- how will we meet the new challenges, including the escalating number of cases involving mass victimization, as well as the continuing challenge of providing comprehensive rights and services for all crime victims? I would suggest that we try to attain at least five goals:

- 1) Every victim should have the fundamental rights to be informed, present, and heard, guaranteed by a federal constitutional amendment, and victims should have rights in the juvenile justice system.
- 2) The voices of crime victims must become an even more valued part of the criminal justice system. Victims' issues should be included in trainings for all criminal justice and other relevant professionals, awareness programs for children, and in college and graduate courses for all professions that interact with crime victims.
- 3) All people who work with crime victims should be trained in providing highly coordinated services and working in partnership with other professions.
- 4) Every victim should receive comprehensive, coordinated services in victim-oriented settings to ensure justice and healing.
- 5) All of America's children must be provided with the opportunities and support they need to become productive adults through the funding of effective prevention programs.

First, if victims' rights are to become a reality in the 21st Century, we need to amend the United States Constitution to provide for the rights of crime victims.

State victims' bills of rights and constitutional amendments have created a patchwork quilt of rights that vary from state to state. For example, although most states give victims the right to attend criminal justice proceedings, many states limit even that most basic right. An analysis of state victims' rights by the National Center for Victims of Crime found that four states permit the court to exclude a victim when "necessary to protect the defendant's right to a fair trial" or where allowing victims to be present would be "inconsistent with the constitutional and statutory rights of the accused." Another six states give victims a right to be present only after they have testified.

A federal constitutional amendment would create a baseline of fundamental rights to be present, to be informed, and to be heard -- rights that would apply to every victim whether they are attacked in New York, Iowa, or California.

We know through anecdote and research that state statutes often are ignored and unenforced. For example, another study by the National Center for Victims of Crime found that "even in states where legal protection is strong, some victims are not afforded their rights. In other words, enactment of State laws and State constitutional amendments alone appears to be insufficient to guarantee the full provision of victims' rights in practice." The study pointed out that more than one in four victims from the two strong-protection states surveyed were very dissatisfied with the criminal justice experience. Almost 50 percent of them were not notified of the sentence hearing, and many were not informed of plea negotiations. Substantial proportions of victims in both the strong- and weak-protection states surveyed were not notified of other important rights and services.

The rights of crime victims should not be based upon the state in which the crime occurred or the age of the offender. A Victims' Rights Constitutional Amendment would ensure fundamental rights for victims across the country and help improve enforcement efforts. Victims also should have fundamental rights in juvenile justice proceedings, especially those involving violent crimes.

Second, we must make every effort to integrate the powerful voices of crime victims into every aspect of the criminal and juvenile justice systems, from community education programs to police officer trainings, from programs to help rehabilitate juvenile delinquents to victim impact panels that provide training for all relevant victim service providers.

No one should become a cop, a prosecutor, a corrections officer, or a judge without quality training from crime victims and their advocates. They are our most important teachers about the shortcomings in our system and how to provide needed services.

Victim impact panels can provide an important educational function in schools to teach children about victimization and in colleges and graduate programs to train all relevant professions, including lawyers, doctors, and the clergy. These panels also should be a critical part of educational programs in correctional facilities. Putting a human face on crime is an important crime prevention and rehabilitative strategy. These panels have been used with great success by Mothers Against Drunk Driving in their programs to rehabilitate drunk drivers and by the California Youth Authority to help wards understand the impact of their actions.

Third, one of the most important things that is happening in the victims' field today is that people in the system -- law enforcement, prosecutors, judges, corrections officials, and others -- are re-defining their roles to enhance victims' rights and services. It is exciting to travel across the country to witness the revolution that is taking place in victims' services -- the new partnerships that are being formed. For example:

- In New York City, you can see a law enforcement officer respond together with a social worker to domestic violence calls. They refer to each other as "partners."
- Correction officials, who once defined their roles only in terms of offenders, now describe one of their major functions as providing services to crime victims -- keeping victims informed of the status of their offenders, soliciting their views at parole hearings, and making them part of the decision-making process.
- Instead of using expensive doctors, many victims now use specially-trained nurse practitioners to conduct sexual assault exams in settings designed specifically for them. This approach helps victims avoid busy hospital emergency rooms. Across professions, there is an effort to see the system through the eyes of the "customer" and to be more responsive to their needs.

Fourth, just as there is a paradigm shift in the way in which professionals view their roles, so too is there a shift in the way effective services are being provided. Cutting edge victim service programs today are "partnerships," where everyone collaborates to provide better services for victims and where those services are delivered in a highly coordinated fashion. For example:

- At the more than 400 children's advocacy centers around the country, governmental agencies work together to reduce the number of interviews and coordinate cases in a child-friendly facility. The co-location of diverse professionals improves services to victims.
- Through nearly 500 TRIAD programs, law enforcement representatives meet regularly with senior citizens to help them respond better to their needs. In one community, the officers hired a bus to help seniors shop safely, and the seniors crocheted sweaters for teddy bears for the officers to give to sexually abused children.
- Some communities, like Jacksonville, Florida, have developed victim service centers -- places where all victims can go to receive needed services in one location.

Who is the catalyst in the community? It can be anyone - - virtually any professional within the system.

- The first children's advocacy center was initiated by a district attorney in Huntsville, Alabama.
- The TRIAD program was created by a sheriff in St. Martin Parish, Louisiana.
- In other communities, social workers, doctors, or nurses have provided the leadership in establishing comprehensive victim services.

Finally, we must stand up for crime prevention programs. As someone who has worked as a victim advocate for three decades, what victims most often say to me is, "If I could have one wish, it is that the crime would have been prevented in the first place." Prevention is perhaps the most fundamental challenge that we face.

Some years ago, a father from East Los Angeles whose 16-year-old son was shot down in the street by gang members, said to me in words I'll never forget, "I did everything for my own son. I helped him study every evening. He was first in his class. We played sports together every day. He was a star athlete. But I forgot one thing. I forgot about all of the other kids." One of the most important things that we can do to fight crime is to remember "all of the other kids" and support prevention programs that will give them a chance to thrive and to learn and to be the best that they can be.

For those of us who work with crime victims, we often confront the worst in people who have committed unthinkable criminal acts. But every day in our work, we meet the most extraordinary

heroes, people like Emma and countless others, who teach us about courage, about commitment, about caring. People who are able to turn their agony into activism to help others. It is indeed an honor to work with, and learn from, these remarkable human beings.